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SUMMARY RECORD OF THE 1207th MEETING

Held at Headquarters, New York,
on Monday, 22 March 1993, 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Draft general comment on article 18 of the Covenant (CCPR/C/45/CRP.2)

1. The CHAIRMAN recalled that, at its previous session, the Committee had adopted paragraphs 1 to 5 of the draft general comment (CCPR/C/45/CRP.2) and that paragraph 6 had been shortened and combined with paragraph 5.

2. Mr. DIMITRIJEVIĆ said that the Committee might need to review the paragraphs it had already adopted in order to accommodate views subsequently expressed.

Paragraph 7

3. Mr. DIMITRIJEVIĆ said that paragraph 7 was concerned with the inherent limitations of freedom of belief, since freedom of conscience and religion was defined not only positively but also negatively in the Covenant. Article 20 prohibited incitement to war, discrimination, hatred, hostility and violence; that prohibition applied to article 18 and should therefore be mentioned. It was not a limitation that was permissible for States, but was an inherent limitation on freedom of religion. History had shown that that freedom could be abused, leading to massive violations of the rights of others, if it was not kept within the boundaries of article 20.

4. Paragraph 7, then, was a short paragraph which merely indicated the limits of the freedom set out in article 18 and referred to the Committee's general comment 11, on article 20. Some members had felt that the reference to "tolerance" was unnecessary, while others had maintained that it was essential: if persons professing their religion and other beliefs relied on the tolerance of others, they should also be expected to practise tolerance themselves.

5. Mrs. EVATT said that the first part of the first sentence could be deleted. Furthermore, the reference to article 20 should cite the actual text of the article.

6. Mr. SADI noted that the Committee sometimes tried to elaborate on the wording of the Covenant in order to interpret it.

7. The Committee should make a distinction between wars of aggression and wars of defence when referring to "incitement to war". "Discrimination" presumably referred to negative discrimination rather than positive discrimination or affirmative action. "Violence" could sometimes be a form of self-defence. The Committee had to take into account the multiple meanings of those terms.

8. Miss CHANET said that it was not clear why paragraph 7 referred to only one of the limitations mentioned in article 18. She agreed that the exact wording of article 20 should be used. The phrase "the principle of ideological and

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religious tolerance" was somewhat curious; the word "tolerance" could stand alone, since ideology and religion were very different philosophical concepts.

9. Mr. WENNERGREN observed that article 20, paragraph 2, referred to advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence. However, incitement to national and racial hatred lay outside the scope of the general comment on article 18 and need not be mentioned. The paragraph should therefore be reworded to remain within the scope of article 18 as it encompassed article 20.

10. Mr. LALLAH said he felt that article 20 did act as a limitation on freedom of expression as understood in article 18. Paragraph 7 was somewhat lopsided, since it referred to only one kind of limitation, while other limitations under article 18, paragraph 3, were referred to in paragraphs 9 and 10 of the draft general comment. It might be sensible to combine those paragraphs.

11. A true freedom required respect and State action to ensure such respect. Mere tolerance was not enough. The Committee might therefore wish to refer to the "principle of respect for ideological and religious freedoms" at the beginning of the paragraph.

12. Mrs. HIGGINS agreed that paragraph 7, particularly the beginning, needed rewording. Logically, the paragraph ought to follow the comments on article 18, paragraph 3. The Committee should first deal with the limitations within article 18 itself and then go on to the question of whether there was an effective limitation that bore upon it from another article.

13. Mr. EL-SHAFEI said that paragraph 7 mixed a number of issues, and should be simplified. He agreed that the first sentence needed to be reworded: it was not clear what was meant by "the principle of ideological and religious tolerance" or by "similar messages".

14. Mr. MAVROMMATIS said that the reference to "tolerance" introduced a notion of condescension. The Committee should strengthen paragraph 7 by spelling out the duty of Governments to protect the freedom to believe or not to believe and to guarantee such rights and respect for people of all religions under the law.

15. Mrs. EVATT said she felt that the idea behind paragraph 7 was that the enjoyment of freedom of religion or belief was necessarily limited by the requirement to respect other people's right to that same freedom. Article 20 dealt with permissible limits on that freedom.

16. Mr. WENNERGREN said that article 20, paragraph 2, did not just set limits on the exercise of religious beliefs but also protected other religious beliefs so that they would not be jeopardized by one group of believers attacking another. In such cases protection was needed for the group under attack.

17. Mr. HERNDL suggested that the Committee might refer to the "idea" rather than the "principle" of ideological and religious tolerance. He would prefer to retain the rest of the first half of the first sentence. The Committee should

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also strictly adhere to the language of article 20, but should refer only to religious hatred and not establish a link between religious tolerance and freedom and incitement to war.

18. Mr. DIMITRIJEVIĆ said that the placement of paragraph 7 had been intended to indicate that the freedom enunciated in article 18 was inherently limited by the Covenant itself. There was a difference between that limitation, which was mandatory, and the limitations in article 18, paragraph 3, which were permissive, and meant that freedom of religion could vary in scope from one country to another. However, it would be possible to move paragraph 7 so that it followed paragraph 8.

19. The reference to "tolerance" referred to tolerance for the rights of others on the part of those who enjoyed the freedoms envisaged in article 18, rather than tolerance on the part of the State. If the word caused confusion, it might be better to avoid it and to replace it by wording similar to that suggested by Mrs. Higgins. The word "ideological" had been included to indicate that article 18 referred to matters of conscience as well as religious belief.

20. The Working Group had tried to depart from the wording of article 20 because that wording was not very clear without reference to the travaux préparatoires. The best solution might be to reproduce article 20 in full; the Committee would then have the authority of the wording of the Covenant. He would prefer not to limit the reference to article 20 to the question of religious beliefs, since such beliefs often included hatred not only of other religions but also of other peoples and races.

21. Mr. BRUNI CELLI said it was not clear that the limitations in article 18, paragraph 3, were merely permissive if they were deemed to be necessary to protect public safety and order. Under article 20, propaganda for war and advocacy of national, racial or religious hatred were prohibited by law.

22. Miss CHANET agreed that article 20 should be quoted in its entirety and noted that the word "limits" in paragraph 7 had caused some confusion. States had the freedom to decide whether or not to impose restrictions, but once they decided to do so, they were bound by the restrictions set out in article 18, paragraph 3. Under article 20, States were bound to enact laws to prevent any incitement to discrimination, hostility or violence. Thus the distinction to be made was between positive obligation and negative limitations. Perhaps those two ideas should be expressed in two separate paragraphs, as Mr. Dimitrijević had suggested, and follow paragraph 8.

23. Mrs. HIGGINS said that there was general agreement on the need to relocate the paragraph. In addition, new language was needed to reflect the mandatory nature of article 20, stressed by Mr. Dimitrijević and Mr. Bruni Celli, and its impact on article 18, paragraph 3, which set forth permissible limitations. She agreed with Mr. Dimitrijević that the reference to article 20 should not be limited to religious hatred, since such hatred was often linked to persons belonging to a particular national or racial group. Accordingly, she proposed that the paragraph should be revised to read: "Respect for the beliefs and religions of all persons is limited by the requirements of article 20. Any

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manifestation of religion or belief that is an advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. As stated by the Committee in general comment 11, it is the duty of States parties to enact laws to prohibit the advocacy of such beliefs or religious views."

24. Mr. DIMITRIJEVIĆ said that it would be incorrect to cite only those portions of article 20 the Committee considered appropriate; paragraph 1 of that article, on propaganda for war, should also be cited. To avoid unnecessary repetition the final sentence might read "As stated by the Committee in general comment 11, States are under the obligation to enact laws to that effect."

25. Mr. HERNDL expressed reservations about the use of the word "respect" in the first sentence: he wondered whether it was respect or freedom that was to be limited by the requirements of article 20.

26. Mrs. EVATT said that article 20 limited the requirement of respect for beliefs and religion of others rather than respect for beliefs and religions which was inherent in the enjoyment of that right.

27. Mr. SADI sought clarification of the term "respect" and the way in which it was limited by article 20. He also questioned the legal connotation of that term in the first sentence and suggested that the word "protection" should be inserted, so that the sentence read "respect and protection".

28. Mr. AGUILAR shared the doubts expressed by previous speakers regarding the use of the word "respect" in paragraph 7. He proposed that the first sentence should read "Respect for the beliefs and religions of others limits the freedom of conviction and religion as stated in article 18 and under the requirements of article 20." He agreed that paragraph 1 of article 20, regarding propaganda for war, should be reflected in the text.

29. Mr. LALLAH said that, since the wording of paragraph 7 had been changed and the word "tolerance" dropped, perhaps the word "respect" should also be dropped and the text reworded to read "The exercise of the right to freedom of religion and beliefs of all persons is limited."

30. Mr. POCAR said that article 20 did not limit the freedom of religion or belief but rather the freedom to manifest one's religion or beliefs. Article 20 fell within the scope of article 18, paragraph 3, which defined the limitations of the freedom to manifest religion or beliefs. The new paragraph 7 should immediately follow the paragraph on limitations.

31. Paragraph 1 of article 20 was more closely related to article 19, paragraph 2, and the freedom of expression than to the freedom of beliefs. Nevertheless, it could be included in the reference to article 20.

32. Mr. WENNERGREN said that the term "respect" was used in article 2 of the Covenant, which stipulated that States parties undertook to respect the rights recognized in that instrument. That did not mean, however, that States parties should respect those rights in an unlimited way, but simply to the extent required by the Covenant.

33. Miss CHANET said that under article 18, paragraph 3, a State had the option of limiting or not limiting the expression of religion, as long as public safety was not threatened. Article 20, however, imposed a specific obligation on the State not to authorize any appeal to hatred, especially religious hatred. Both stipulations needed to be included in the text proposed by Mrs. Higgins, which should be amended to read "Freedom of religion ..." rather than "Respect for the beliefs and religions ...". That freedom was subject to the obligations set out in article 20 and the limitations imposed under article 18, paragraph 3.

34. Mr. PRADO VALLEJO said that article 18 and article 20 were distinctly different. Article 18 set its own limitations regarding the freedom of thought, conscience and religion in paragraph 3. Article 20 had a different perspective and enumerated the State's obligations to prohibit by law propaganda for war and any advocacy of national, racial or religious hatred.

35. Mrs. EVATT said that when she had used the term "respect", she was referring to the individual's respect of the rights of other individuals rather than the State's respect for rights it was obligated to limit under article 20.

36. Mr. DIMITRIJEVIĆ said that the freedom referred to in article 18 was not only religious freedom, but represented a wider concept that included other beliefs. If it was decided that the word "respect" should be retained, it ought to mean respect for the religion of others and for their interests as well. He then proposed that paragraph 7 of the draft general comment should read: "Respect for the rights of others determines the limits of the freedoms set out in article 18. According to article 20, no manifestation of religion or beliefs may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As stated by the Committee in its general comment 11, States parties shall enact laws to prohibit such acts." "Such acts" should be used so as not to repeat the word "manifestations".

37. The CHAIRMAN said he took it that consensus had been reached on the basis of the proposal by Mr. Dimitrijević and that the revised text of paragraph 7 would be placed between existing paragraphs 8 and 9.

38. Paragraph 7 was provisionally adopted.

Paragraph 8

39. Mr. DIMITRIJEVIĆ said that paragraph 8 dealt with the liberty of parents or legal guardians to ensure that their children received a religious and moral education in conformity with their own convictions, as set forth in article 18, paragraph 4, of the Covenant. That freedom was related to the guarantee of the freedom to teach a religion or belief stated in article 18, paragraph 1. The paragraph also reflected the Committee's view that compulsory education should not include indoctrination in a particular religion or belief, but that States parties were free to introduce in public schools subjects which dealt with religion in a neutral and objective way. Lastly, the paragraph invited States parties to report how they ensured that the religious and moral aspects of compulsory education did not reflect only the beliefs of dominant groups.

40. Mr. SADI proposed that the second sentence should be amended to read: "The Committee notes that compulsory education that is confined or limited to indoctrination in a particular religion or belief is inconsistent with article 18 (4) ...". The final sentence should also be amended; States parties should be invited to report how they ensured that compulsory education was conducted in a manner consistent with the general thrust of the paragraph.

41. Mrs. HIGGINS said that the scope of the paragraph might be broader than that of article 18, paragraph 4, which required States to have respect for the liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions, but did not necessarily impose on States an obligation to provide such education; rather, it provided an opportunity for religious and moral teaching to be offered through the private sector.

42. Mr. NDIAYE said that the paragraph did not appear to have been drafted in accordance with the Committee's traditions. The provision, in the third sentence, that public-school instruction in religious subjects should be given in a neutral and objective way would be particularly difficult to implement as it was unclear how religion could be taught in a non-doctrinal manner. It might be better to state that religious education should not be compulsory and should not be imposed on children of different religious backgrounds. The final sentence also raised difficulties: in States where religious education was optional, it was unclear how those States could be required to ensure that such education did not inculcate exclusive moral precepts. States should be concerned with ensuring the right of schools to provide religious education, rather than with the manner in which it was provided.

43. Mr. LALLAH said that article 18, paragraph 4, did not impose on States any obligation to provide religious education. In his country, Mauritius, a general debate was taking place as to the secular character of the State and discrimination in the allocation of funds. Under the Optional Protocol to the Covenant, complaints had been made by parents who felt that the moral education provided by a school had been patterned too closely on a particular religious faith. Where school curricula included religious instruction, States should ensure that aid was not provided in a discriminatory manner.

44. Mr. MAVROMMATIS agreed with previous speakers that the paragraph, as drafted, might impose unrealistic obligations on States parties. States should be invited to report how they ensured that religious and moral education were provided in a manner consistent with the other principles of the Covenant.

45. Mr. PRADO VALLEJO said that the paragraph should be redrafted to take into account several basic principles. The first principle related to the right of parents or legal guardians to ensure that their children received a religious and moral education in conformity with their own convictions. There were two kinds of compulsory education: that provided by State schools, and that provided by private schools. While the teaching of any religion was prohibited in State schools, it was possible that an official State religion might be taught. In such cases, parents who did not profess the official religion had the right to request that it not be taught to their children. Private schools,

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on the other hand, could provide religious instruction, while parents who enrolled their children in such schools had the right to request that they be exempt from such instruction.

46. Mr. AGUILAR said that the concept of compulsory education needed to be clarified. A distinction should be drawn between State and private education: while State schools must not promote the teaching of any particular religion, private schools could provide religious education if parents were willing to pay for it.

47. Mr. WENNERGREN said that the paragraph also raised the issue of freedom of religion for minors. Article 18, paragraph 2, stated that no one should be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice. The Committee's recognition, in the second sentence of paragraph 8, of the right of children themselves to adopt a religion or belief appeared to be in conflict with the liberty of parents or legal guardians to ensure that their children received a religious and moral education in conformity with their own convictions.

48. Mrs. EVATT said that the concept reflected in the paragraph was simple and important, namely, that while States could not restrict individual liberties, they might undermine such liberties in other ways, for example, through the provision of compulsory education embodying a particular religion or belief. States must ensure that the content of their compulsory education respected the conviction of parents and guardians, especially those who did not believe in any religion. She wondered whether the paragraph should include a reference to article 27 of the Covenant, which protected the right of religious minorities to practise their religion.

49. Mr. BRUNI CELLI said that the linkage established in paragraph 8 between paragraphs 1 and 4 of article 18 was appropriate. The issue which required clarification, however, was whether article 18, paragraph 4, could be interpreted to mean that States had an obligation to establish a number of schools teaching different religions. It was unclear whether States were required only to respect freedom of religion, or whether they must also promote the teaching of religious beliefs in a non-discriminatory manner.

50. Mr. POCAR said that, in contrast to paragraph 1, paragraph 4 of article 18 did not speak of "rights" but of "liberties"; the two paragraphs therefore had different connotations. Moreover, there seemed to be a contradiction between the "rights" of the child, as set out in paragraph 2, and the "liberty" of parents, as set out in paragraph 4 of article 18. Perhaps paragraph 4 had been added to article 18 some time after the first three paragraphs without thorough consideration of the relationship between that paragraph and the preceding text. In order to strike a better balance between parental and children's rights, he suggested that paragraph 4 should be interpreted in a manner more consistent with evolving notions of the rights of the child, an approach that would be in accord with the Convention on that subject.

51. Mr. SADI suggested that the only aspect of article 18, paragraph 4, that needed to be considered was parents' freedom to control the religious education of their children.

52. Mrs. HIGGINS said that there was not a large discrepancy between the rights of minors and the rights of parents as reflected in the language of the two paragraphs, since most people ultimately chose their own religious convictions despite having been educated, at their parents' wishes, in religious schools. However, if other members of the Committee were having difficulty with the language of the two paragraphs, the following sentences might be inserted somewhere in the draft: "State education may include religious education, but parents or guardians may require that their children be exempted from such teaching. The State should ensure that private schools offering religious education also allow exemption from such teaching. States may not prohibit the establishment of private schools for the teaching of religions other than the majority religion of the State concerned, though they may require that general educational standards be met in the schools."

53. Mr. HERNDL endorsed Mrs. Higgins' proposed revisions, which were very thorough. Clearly, what was at issue in the Committee's discussion was the scope of religious education in schools.

54. Mr. DIMITRIJEVIĆ suggested that a sentence might be inserted between the first sentence of the current draft of paragraph 8 and Mrs. Higgins' proposed addition, stating that parents should be provided with a meaningful and affordable alternative if compulsory education included religious or moral instruction based on the tenets of a particular faith. That revision would protect parental liberties not just in theory, but in practice.

55. While he agreed with previous speakers who had emphasized the importance of the rights of children, he believed that those rights had already been enshrined in the current draft. However, as a compromise, language might be inserted to the effect that parents and guardians should give "due regard" to the right of the child not to be subject to coercion in his or her religious education. In addition, the Committee's discussion seemed to focus too much on the question of religious education, when the words "moral education" were equally a part of the text of article 18, paragraph 4. the experience of the education systems of the former socialist States showed that the imposition of non-religious value systems in the context of compulsory education could be no less coercive.

56. While the first sentence of paragraph 8 need not necessarily be eliminated, revisions were required to state more clearly the right of parents to organize alternative forms of religious education. Otherwise, paragraph 4 of article 18 would be reduced to its most primitive meaning: that if a parent was not happy with the religious aspect of a child's education in public school, then the child would be allowed to absent himself and receive teaching from his parents on those subjects. Parents were not normally qualified to provide such an education. Thus, while the revisions proposed by Mrs. Higgins were excellent, it might be advisable to insert a sentence indicating that parents did not have the right to exclude their children from particular lessons merely because they touched on religion in some way. Alternatively, the word "those" could be substituted for "parents and guardians" in the third sentence of paragraph 8, thereby broadening the reference to non-believers to include children.

57. Mr. SADI expressed reservations about the reference to parents' "due regard" for the rights of children in the context of the religious education of minors. He wondered whether the "due regard" standard could really be applied in the case of young children. After all, it would be difficult to prevent the coercion of a child six years of age, and it therefore seemed clear that article 18, paragraph 4, had been intended to give parents the freedom to control their children's religious education. If the draft comments were intended to be of a general nature, it would be difficult to address the practical problems that might arise in balancing the rights of children not to be subject to coercion and the freedom of parents to control the religious education of minors.

58. The CHAIRMAN suggested that Mrs. Higgins should redraft paragraph 8 to reflect the questions raised by the previous speaker.

The meeting rose at 6.10 p.m.